

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Holly Raser)	AND
)	STATEMENT OF FINDINGS

Chris Wilcox filed a complaint alleging that Holly Raser violated Montana campaign finance and practices laws and rules.

SUMMARY OF FACTS

1. On April 24, 2007, Holly Raser filed a form C-1 Statement of Candidate with the office of the Commissioner of Political Practices (CPP). The C-1 stated that Raser would seek election to the office of Superintendent of Public Instruction in 2008, and listed Raser's sister, Vicki Thornton, as Campaign Treasurer.
2. When Raser filed the C-1, she was serving a term as a Representative in House District (HD) 98. Raser had an existing constituent services account that she established as a Representative in HD 98 prior to the enactment of House Bill 462 by the 2007 Montana Legislature. (See discussion in the Statement of Findings on page 12.)
3. In addition to Raser, three other Democrats ran for the office in the 2008 Primary Election – Denise Juneau, Sam Kitzenberg, and Claudette Morton. Denise Juneau won the Primary and went on to win in the General Election in November 2008.
4. The complaint alleges that Raser violated § 13-37-216, MCA when she received loans from two individuals who had previously contributed the maximum amounts permitted under the statute. The complaint also alleges that Raser's receipt of the loans and subsequent reporting activities violated § 13-37-217, MCA, which prohibits contributions in the name of an undisclosed principal. Finally, the complaint alleges Raser violated statutes and rules that require the timely deposit of contributions into a campaign account and require segregation of campaign accounts from personal accounts.
5. Raser opened a campaign account at the Missoula Federal Credit Union under the name "Raser for Our Kids." Raser maintained her constituency services account (see Fact 2) in the same credit union, but under a different account number.

6. On July 5, 2007 Raser filed a form C-5 campaign financial disclosure report with CPP covering the period from April 1 to June 30, 2007. The C-5 discloses a \$250 contribution from Robert Moore, Raser's step-father. The report lists the following expenditures that were not reflected in bank documentation pertaining to Raser's campaign account:

April 19, 2007	Staples	\$31.96
April 24, 2007	Ben Franklin	\$13.98
April 26, 2007	Costco	\$127.22
May 3, 2007	Kinko's	\$32.98
June 28, 2007	U.S.P.S.	\$41.00

Raser explained that she paid these five bills either with cash from campaign contributions or with her own personal funds, and then reimbursed herself from her campaign account. The C-5 does not disclose loans from Raser, or expenditures from the campaign account when she reimbursed herself.

7. On October 4, 2007 Raser faxed a C-5 report to CPP covering the reporting period from July 1 to September 30, 2007. The C-5 discloses receipts of \$18,600 and expenditures of \$1,951.88 for the reporting period. Included within the receipts listed are loans of \$11,000 from Robert Moore and \$5,000 from Vicki Thornton. The C-5 also discloses a \$250 contribution from Thornton during the same reporting period. The loans from Moore and Thornton were deposited into the "Raser for Our Kids" campaign account.

8. On October 5, 2007 a newspaper reporter contacted CPP and pointed out that based on Raser's C-5 fax-filed the previous day it appeared she had accepted the two loans described in Fact 7 in violation of §13-37-216, MCA, which limits aggregate contributions to a candidate for Superintendent of Public Instruction for each election in a campaign to \$250. Mary Baker, Program Supervisor at CPP, telephoned Raser and discussed the loans. Raser stated she would file an amended C-5.

9. On October 5, 2007 Raser faxed an amendment to her C-5 to CPP, purporting to correct the reporting of the loans with the following notations on the amendment:

As originally reported: \$16,000 in loans from others (Robert Moore and Vicki Thornton)

Explain Correction: Should be candidate's personal contribution. See corrected page attached.

10. On October 9, 2007 Baker telephoned Vicki Thornton and told her the contributions in the form of loans from Moore and Thornton exceeded statutory contribution limits. Baker also told Thornton that the amendment submitted by Raser was not acceptable. Baker advised Thornton the two loans would have to be refunded and that documentation of the

refunds would have to be provided to CPP. Just before noon on that same date, Raser emailed Baker with the following message:

Mary,

I'm sorry I made a mistake on the original C-5 for this quarter and not clear on the amended form. That's what I get for doing it myself instead of having my treasurer do it for me. (She was out of town.)

My sister and my parents both loaned me the money. I decided to use the money for my campaign. The \$16,000 should be listed as my personal contribution to my campaign.

If I am incorrect in this or if you have questions, you can contact me at this email address until about 4:00 this afternoon, or call me on my cell phone . . .

Thank you!

Holly Raser

The complaint was filed the next day.

11. The \$11,000 in loans from Moore were paid in four separate checks of \$5,000, \$4,000, \$1,000, and \$1,000. Each check was made out to "Raser for Our Kids." The \$5,000 loan from Thornton was paid in one check made out to "Holly Raser." All of the checks were deposited into the "Raser for Our Kids" campaign account.

12. On December 8, 2007 Baker had a telephone conversation with Thornton. Thornton stated that Raser intended to refund the loans, and that she would provide copies of the refund checks and report the reimbursement on the next campaign finance report. Thornton told Baker that Raser intended to take out a personal loan to pay back the \$16,000 in loans she received from Moore and Thornton.

13. On January 4, 2008 Raser fax-filed a C-5 with CPP, covering the reporting period from October 1 to December 31, 2007. The report listed receipts of \$20,960 and expenditures of \$16,570. The C-5 listed a \$20,000 loan from Raser as a contribution. Raser included with the report copies of refund checks of \$11,000 written to Moore and \$5,000 written to Thornton. The C-5 also listed as expenditures \$11,000 to Moore and \$5,000 to Thornton, describing the purpose of each as "refund."

14. On March 10, 2008 Raser fax-filed a C-5 with CPP, covering the reporting period from January 1 to March 5, 2008. The report listed receipts of \$520 and expenditures of \$917.99.

15. On May 30, 2008 Raser fax-filed a C-5 with CPP, covering the reporting period from March 6 to May 17, 2008. The report listed receipts of \$1,740 and expenditures of \$10,380.39.

On the same date, Raser fax-filed a C-5 to CPP, covering the reporting period from May 18 to May 24, 2008. The report listed receipts of \$230 and expenditures of \$5,961.22.

16. On August 7, 2008 Raser fax-filed a C-5 with CPP, covering the reporting period from May 25 to June 18, 2008. The report was marked as a “closing report.” The report listed receipts of \$2,550 and expenditures of \$10,376.10. The report listed \$371.12 as “cash in bank.” The C-5 listed two outstanding debts, both owed to Raser – a \$20,000 debt incurred on December 28, 2007, and a \$2,500 debt incurred on June 18, 2008.

17. On August 15, 2008 Baker sent a letter to Raser noting that because there were debts listed on the C-5 filed on August 7, 2008, that report would not be considered a closing report. As of the date of this decision, Raser has not filed a closing report.

18. Raser's bank records show that on December 23, 2008 she transferred \$180.30 remaining in her campaign account to her existing constituent services account. (See Fact 2.) The amount that Raser transferred from her campaign account to her constituent services account differs from the \$371.12 she reported as “cash in bank” on her purported closing report submitted on August 7, 2008. (See Fact 16.) Raser also stated that she used some funds from her constituent services account to pay part of her campaign debt. None of the transfers of funds between Raser’s constituent services account and her campaign account were reported on Raser’s C-5 periodic campaign finance reports.

19. When interviewed for this complaint Raser acknowledged that this was her fifth political campaign, but her first campaign for a statewide office. Raser stated she tried to manage her campaign without help and “got in over her head.” Moore and Thornton, her step-father and sister, agreed to help by loaning her money. According to Raser, while she knew that candidates could accept loans, she failed to properly research the statutes and rules to determine what was legal and what wasn’t. Raser contends she took out a home equity loan to repay the loans from Moore and Thornton, and that she also used part of the home equity loan proceeds to pay other expenditures related to her campaign.

20. The complaint alleges that Raser violated Montana law that requires timely deposit of campaign contributions. § 13-37-207, MCA requires contributions to be deposited into a campaign account within five business days of receipt. A review of Raser campaign’s bank records establishes that 82 contributions were deposited into her campaign account more than five business days following their receipt, with many of them deposited weeks later than the time required by law. Information regarding the contributions and dates of deposit is listed on the next pages. The total of late-deposited contributions is \$20,984.32.

<u>Check Date</u>	<u>Deposit Date</u>	<u>Check Amount</u>	<u>Contributor</u>
April 25, 2007	June 15, 2007	\$50.00	Franke Wilmer
April 26, 2007	June 15, 2007	\$100.00	Robin Hamilton
April 26, 2007	June 15, 2007	\$50.00	Deborah Kottel
April 26, 2007	June 15, 2007	\$50.00	Joseph Lamson
April 26, 2007	June 15, 2007	\$25.00	Stacy French
April 26, 2007	June 15, 2006	\$100.00	Dan Villa
April 26, 2007	June 15, 2007	\$100.00	Wanda Grinde
April 26, 2007	June 15, 2007	\$50.00	James Ahrens
April 26, 2007	June 15, 2007	\$50.00	Arlene Becker
April 26, 2007	June 15, 2007	\$250.00	Ronald Erickson
April 26, 2007	June 15, 2007	\$20.00	Kendall Van Dyk
April 26, 2007	June 15, 2007	\$25.00	Douglas Cordier
April 26, 2007	June 15, 2007	\$25.00	J. Michael Pichette
April 26, 2007	June 15, 2007	\$25.00	Gary Spaeth
April 26, 2007	June 15, 2007	\$25.00	Robyn Driscoll
April 26, 2007	June 15, 2007	\$50.00	Gary Branae
May 25, 2007	June 15, 2007	\$250.00	Jim Thornton
June 10, 2007	July 3, 2007	\$50.00	Jon Sesso
June 20, 2007	July 16, 2007	\$250.00	Kathleen Moore
July 2, 2007	July 16, 2007	\$250.00	Robert Moore
July 26, 2007	August 8, 2007	\$50.00	Henry Plott
August 6, 2007	August 22, 2007	\$100.00	Evelyn Arnold
August 8, 2007	August 27, 2007	\$50.00	Scott Martin
August 14, 2007	August 27, 2007	\$50.00	Jani McCall MacBoyle
August 27, 2007	October 4, 2007	\$100.00	Holly Franz
August 28, 2007	October 4, 2007	\$35.00	Barry Stang
September 1, 2007	October 4, 2007	\$100.00	Patricia Torgerson
September 1, 2007	October 4, 2007	\$50.00	Patrick Melby
September 1, 2007	October 4, 2007	\$60.00	Gail Abercrombie
September 1, 2007	October 4, 2007	\$25.00	Mary Giuliani
September 2, 2007	October 4, 2007	\$5,000.00	Vicki Thornton
September 3, 2007	October 4, 2007	\$20.00	Cathy Sessions
September 5, 2007	October 4, 2007	\$5,000.00	Robert Moore
September 5, 2007	October 4, 2007	\$4,000.00	Robert Moore
September 5, 2007	October 4, 2007	\$1,000.00	Robert Moore
September 5, 2007	January 3, 2007	\$50.00	Larry Jent
September 7, 2007	October 4, 2007	\$100.00	Elizabeth Best
September 7, 2007	October 4, 2007	\$40.00	Susan Witte
September 16, 2007	October 4, 2007	\$100.00	Matthew Thiel
September 16, 2007	January 3, 2008	\$28.81	Act Blue
September 17, 2007	October 4, 2007	\$100.00	Jacqueline Lenmark
September 19, 2007	October 4, 2007	\$250.00	David Gallik
September 22, 2007	January 3, 2008	\$20.00	Jane Carlson
September 29, 2007	January 3, 2008	\$30.00	Noreen Burris
November 1, 2007	January 3, 2007	\$50.00	Jane Selvig

November 4, 2007	January 3, 2008	\$100.00	George Corn
November 4, 2007	January 3, 2008	\$20.00	Jackie Thorpe
November 4, 2007	January 3, 2008	\$9.60	Act Blue
November 6, 2007	January 3, 2008	\$50.00	Ronald Kimmet
November 7, 2007	January 3, 2008	\$25.00	Penny Creighton
November 12, 2007	January 3, 2008	\$50.00	Carla Boettcher
November 15, 2007	January 3, 2008	\$25.00	Amy Stemple
November 16, 2007	January 3, 2008	\$50.00	Arlene Becker
November 22, 2007	January 3, 2008	\$25.00	John Engen
November 25, 2007	January 3, 2008	\$50.00	James Smith
November 25, 2007	January 3, 2008	\$50.00	Marjorie Popham
November 26, 2007	January 3, 2008	\$50.00	Tes Thompson
November 26, 2007	December 13, 2007	\$250.00	John Schulte
December 2, 2007	January 3, 2008	\$96.05	Act Blue
January 16, 2008	March 19, 2008	\$20.00	Tim Berg
January 18, 2008	March 19, 2008	\$250.00	Alan McAfee
January 18, 2008	March 19, 2008	\$250.00	Pamela McAfee
March 17, 2008	May 12, 2008	\$28.81	Act Blue
March 24, 2008	April 12, 2008	\$50.00	Ramona Bilden
March 28, 2008	May 12, 2008	\$50.00	Karen Ekegren
April 1, 2008	August 8, 2008	\$100.00	Carla Luck
April 8, 2008	May 12, 2008	\$50.00	Beatrice McCarthy
April 25, 2008	May 12, 2008	\$100.00	Dale Harris
April 26, 2008	May 12, 2008	\$10.00	Marjorie Harpold
April 28, 2008	May 12, 2008	\$30.00	Betty Whiting
April 29, 2008	May 12, 2008	\$150.00	John Tooke
April 29, 2008	May 12, 2008	\$150.00	Gary Matthews
April 29, 2008	May 12, 2008	\$100.00	Sylvia Danforth
April 29, 2008	May 12, 2008	\$15.00	Kimberly Blunt
April 30, 2008	May 12, 2008	\$50.00	Rosalie Buzzas
May 4, 2008	May 19, 2008	\$96.05	Act Blue
May 5, 2008	May 19, 2008	\$50.00	Rosalie Buzzas
May 7, 2008	May 19, 2008	\$200.00	Lora Hedegaard
May 16, 2008	June 6, 2008	\$75.00	Ruth Fugleburg Hinthner
May 18, 2008	June 6, 2008	\$25.00	Diane Fladmo
May 23, 2008	June 6, 2008	\$30.00	Rebecca Archibald
June 2, 2008	August 8, 2008	\$50.00	Tes Thompson

21. A review of the Raser campaign's bank records and C-5 reports establishes that she failed to report the following contributions totaling \$5,861.10:

Contribution Date	Deposit Date	Amount	Contributor
December 2, 2007	January 3, 2008	\$96.05	Act Blue
May 4, 2008	May 19, 2008	\$96.05	Act Blue
May 25, 2008	June 6, 2008	\$160.00	Groesbeck for House
June 2, 2008	August 8, 2008	\$50.00	Tes Thompson
June 6, 2008	June 6, 2008	\$5,200.00	Holly Raser
Unknown	July 5, 2007	\$259.00	Reimbursement for Ad

22. Raser also failed to report \$111.75 in dividends earned on her credit union campaign account between July 2007 and August 2008.

23. A review of the Raser campaign's bank records and C-5 reports establishes that Raser failed to report the following campaign expenditures:

<u>Check No.</u>	<u>Payee</u>	<u>Date</u>	<u>Amount</u>
1106	YCDD Truman Dinner	July 17, 2007	\$60.00
1115	Staples	August 1, 2007	\$76.96
1118	Gateway Printing	October 4, 2007	\$954.37
1120	Best Buy	December 8, 2007	\$214.98
1124	Staples	February 18, 2008	\$338.92
1125	Luke Duran	February 18, 2008	\$500.00
1126	Bank of America Visa	March 1, 2008	\$299.00
1132	MT Democratic Party	March 25, 2008	\$50.00
1133	Fed Ex Kinkos	March 27, 2008	\$27.97
1135	Sign Pro	March 28, 2008	\$99.80
1137	Shopko	April 1, 2008	\$50.22
1139	Thriftway	April 5, 2008	\$47.00
1149	Luke Duran	April 25, 2008	\$2,390.00
1154	Missoula Dem. Party	April 28, 2008	\$150.00
1156	Kinkos	May 3, 2008	\$307.39
1173	KTVH TV	May 28, 2008	\$50.00
1062	Share Draft - Ad Payment	June 26, 2007	\$259.00
NA	Returned draft fee	June 4, 2008	\$22.00

The total of unreported expenditures is \$5,897.61.

24. Raser accepted the following contributions that exceeded the limit established in § 13-37-216, MCA. (See Facts 6, 7, and 11.)

<u>Deposit Date</u>	<u>Amount</u>	<u>Contributor</u>	<u>Total Contributed</u>
August 5, 2007	\$1,000.00	Robert Moore	\$1,250.00
October 4, 2007	\$5,000.00	Vicki Thornton	\$5,250.00
October 4, 2007	\$5,000.00	Robert Moore	\$6,250.00
October 4, 2007	\$4,000.00	Robert Moore	\$10,250.00
October 4, 2007	\$1,000.00	Robert Moore	\$11,250.00

25. The complaint alleges that Raser violated § 13-37-217, MCA, which prohibits contributions in the name of an undisclosed principal. According to the complaint, when Raser sought to amend her C-5 report to disclose the loans from Moore and Thornton as a personal contribution to the campaign from Raser, she violated the statute. (See Facts 6 – 13.)

STATEMENT OF FINDINGS

Alleged Violation of § 13-37-216, MCA

In 2007 § 13-37-216(1)(a)(ii), MCA limited aggregate contributions by an individual to a candidate for a state office in a statewide election to \$250 for each election in a campaign. Each “election” in a campaign refers to the general election or a primary election that involves two or more candidates for the same nomination. (§ 13-37-216(6), MCA.) Since Raser only competed in the primary election, aggregate contributions by an individual to her campaign were limited to \$250.

Raser’s campaign finance reports disclose a \$250 contribution from Robert Moore during the reporting period from April 1 to June 30, 2007 (Fact 6), and a \$250 contribution from Vicki Thornton during the reporting period from July 1 to September 30, 2007 (Fact 7).

Raser’s C-5 report for the July 1 to September 30, 2007 reporting period also discloses \$11,000 in loans from Moore and a \$5,000 loan from Thornton.

§ 13-37-216(5), MCA states that a candidate may not accept contributions in excess of the limits provided in the statute. Under Montana statutes and administrative rules, a loan is a contribution. (See §§ 13-1-101(7)(a)(i) and 13-37-229(6), MCA; 44.10.321(1)(a) and 44.10.515, ARM.) Raser accepted contributions from Moore that exceeded the limit by \$10,750. She accepted contributions from Thornton that exceeded the limit by \$4,750. Raser has provided proof that she refunded the excess contributions after being instructed to do so by CPP (see Fact 13). While this is a mitigating factor, Raser’s acceptance of the excess contributions violates the prohibition in § 13-37-216(5), MCA.

Alleged Violation of § 13-37-217, MCA

§ 13-37-217, MCA provides:

Contributions in name of undisclosed principal. No person may make a contribution of his own money or of another person’s money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished.

The complaint alleges that Raser violated the statute when she claimed to have made a \$16,000 contribution to her campaign, whereas the money had actually been contributed by Robert Moore and Vicki Thornton in the form of loans.

Raser’s C-5 report filed with CPP on October 4, 2007, clearly discloses \$11,000 in loans from Moore and \$5,000 in a loan from Thornton. (See fact 7.) When questions were raised about the contributions from Moore and Thornton exceeding the limit in § 13-37-216, MCA,

Raser filed an amended C-5 report stating that the \$16,000 in loans should have been reported as “candidate’s personal contribution.” When questioned further by CPP, Raser sent an email describing the loans and her reporting of them, stating in part:

My sister and my parents both loaned me the money. I decided to use the money for my campaign. The \$16,000 should be listed as my personal contribution to the campaign.

If I am incorrect in this or if you have questions, you can contact me at this email address until about 4:00 this afternoon, or call me on my cell phone. . . (See Fact 10).

Raser later took out a home equity loan and used part of the proceeds to refund the loan money she received from Moore and Thornton. (See Facts 13 and 19.)

The purpose of § 13-37-217, MCA is to prohibit “money laundering” of campaign funds. The public has a right to know who is financially backing candidates for public office. If a contribution is made, accepted, or reported in the name of a person other than the person who actually provided the money, the public’s right to full disclosure is impeded.

There is no evidence that Raser knowingly received a contribution or entered a contribution in her campaign accounts in a name other than the name of the person who actually provided the money. As noted above, Raser initially reported the loans as having been received from Moore and Thornton, who actually furnished the money. Although Raser later incorrectly attempted to revise her report to reflect that the loans should have been reported as her own personal contributions to the campaign, at no time did she attempt to hide the true source of the funds. (See Raser’s explanatory email set forth in Fact 10.)

I find no violation of § 13-37-217, MCA.

Timely Deposit of Contributions

§ 13-37-207(1), MCA requires all funds received by a campaign treasurer to be deposited in a campaign depository within five business days after receipt. Fact 20 lists 82 contributions that were not deposited within the time required by the statute, with a total combined value of \$20,984.32. Each late deposit constitutes a violation of the statute.

Failure to Report Contributions

§ 13-37-225, MCA requires a candidate to file periodic reports of contributions and expenditures. § 13-37-229, MCA lists contributions and other information that must be disclosed. Raser failed to report six contributions with a total combined value of \$ 5,861.10. (See Fact 21.) Each unreported contribution constitutes a violation of the statutes.

Failure to Report Expenditures

§ 13-37-230, MCA lists expenditures and other information that must be disclosed in a periodic report required to be filed pursuant to § 13-37-225, MCA. Raser failed to report 18 expenditures with a total combined value of \$5,897.61. (See Fact 23.) Each unreported expenditure constitutes a violation of the statute.

Failure to Report Dividends Earned

§ 13-37-229(11), MCA provides that each campaign finance report shall disclose “other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.” C-5 reports require disclosure of “interest . . . and other miscellaneous receipts.” (C-5 Schedule A, section 4.) According to the CPP *Accounting and Reporting Manual for Candidates and Campaign Treasurers*, at page 11:

Another kind of receipt that is not considered a contribution to a campaign is interest earned on checking or savings accounts. The interest earned must be recorded and reported so accounts will balance, however.

Raser failed to comply with this requirement by not reporting \$111.75 in dividends earned on her credit union campaign account. (See Fact 22.)

Violation of “Expenditure by Check” Rule

44.10.503(3), ARM requires that all expenditures by a candidate or political committee, except those from a petty cash fund, must be made by a campaign treasurer and “shall be made by check” drawn on the campaign depository. Raser made five expenditures using either cash from campaign contributions or her own personal funds, and later reimbursing herself from the campaign account. (See Fact 6.)

In *Matter of Complaints Against Montanans in Action, et al., Summary of Facts and Statement of Findings* (June 26, 2009), I considered the question whether expenditures made by wire transfers instead of by check violated the rule. While I determined that those transactions constituted “technical” violations, I also recognized that an “expenditure only by check” rule is probably no longer realistic in this era of electronic transfers of data and money. I indicated my intention to amend the rule to authorize electronic payments from campaign accounts (although my office has not yet initiated rulemaking proceedings). I also decided that an enforcement action for the particular rule violation was not warranted under the circumstances, partly because the documentation pertaining to the wire transfers contained all the essential information necessary to satisfy the reporting and recordkeeping requirements of Title 13, Chapter 37, MCA. *Id.* at 98.

In contrast, the transactions in this case involve more than “technical” violations, because there is *no* documentation of the five expenditures reported in Raser’s C-5 report.

Transfer of funds between Constituent Services Account and
Campaign Account

Raser filed a form C-1 on April 24, 2007, as a candidate for the office of Superintendent of Public Instruction. (Fact 1.) Raser had previously established a constituent services account as a Representative in House District 98. (Fact 2.) As described in Fact 18, in December 2008 Raser transferred funds remaining in her campaign account to her constituent services account. She also admitted using money from her constituent services account to pay part of her campaign debt. To determine whether these transactions were permissible it is necessary to briefly examine the history of restrictions on the use of surplus campaign funds and the establishment and regulation of constituent services accounts.

§ 13-37-240, MCA regulates the disposal and use of surplus campaign funds. “Surplus campaign funds” are those funds remaining “when all debts and other obligations of the campaign have been paid or settled, no further campaign contributions will be received, and no further campaign expenditures will be made.” (44.10.335(2), ARM.) Candidates are required to dispose of surplus funds within 120 days of filing a closing campaign report. (§ 13-37-240(1), MCA and 44.10.335(1), ARM.) A closing campaign report must be filed “whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign . . .” (§ 13-37-228(3), MCA.) Surplus campaign funds may not be contributed to another campaign or used for personal benefit. (§ 13-37-240(1), MCA.) “Personal benefit” is defined as “a use that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate’s immediate family.” (§ 13-37-240(2), MCA.)

§ 13-37-240, MCA was enacted by Initiative 118 (I-118), approved by the voters in 1994. Following passage of I-118 former Commissioner Ed Argenbright adopted rules further defining the political contribution and personal benefit prohibitions of § 13-37-240, MCA. As originally adopted in 1995, 44.10.335(6)(c)(iii), ARM allowed elected officials to use surplus campaign funds to “establish an account to serve a public purpose related to the officeholder’s public duties.” These accounts were commonly known as “constituent services accounts.” Some time prior to May 14, 2007 Raser established a constituent services account related to her service as a Representative in HD 98. Neither I-118 nor the rules adopted in 1995 imposed reporting requirements or other regulatory provisions on pre-existing constituent services accounts.

In 2007, the Montana Legislature passed House Bill (HB) 462, the first comprehensive bill regulating the use of constituent services accounts. However, the legislation only made the new regulations applicable to accounts created on or after the effective date of the act – May 14, 2007. (See Section 5, Chapter 487, Laws of 2007.)

On September 12, 2008 CPP adopted rules implementing the provisions of HB 462. 44.10.536(8), ARM defines a “pre-existing account” as “an account related to a public official’s office that existed before May 14, 2007.” In general terms, the rules adopted on September 12, 2008 do not apply to a pre-existing constituent services account such as Raser’s. The rules make it clear, however, that pre-existing accounts are subject to the personal benefit and campaign contribution prohibitions in § 13-37-240, MCA, and may also be subject to other laws such as the Montana Code of Ethics, lobbying laws, and certain campaign finance and practices laws. (44.10.537, ARM.)

Because Raser has not yet filed an acceptable closing report (see Facts 16 and 17), she currently has no surplus campaign funds that are required to be disposed of under the requirements of § 13-37-240, MCA. And, because Raser has a pre-existing constituent services account, the rules adopted by CPP in 2008 do not apply to her account. Nevertheless, it was improper for Raser to transfer funds between her constituent services account and her campaign account. Moreover, the transfers between Raser’s campaign account and her constituent services account were not disclosed by Raser in her campaign finance reports.

A candidate is required to designate a primary campaign depository (bank, credit union, etc.) for the purpose of depositing all contributions and disbursing all expenditures during the campaign. While a candidate may have more than one campaign account in a particular depository, a candidate may not utilize her regular or personal account in the depository as a campaign account. § 13-37-205, MCA.

The purpose of requiring a campaign account to be separate and distinct from other accounts is obvious – to ensure that the campaign maintains accurate records and carefully controls and documents receipts into and expenditures from the account. For similar reasons, a candidate may not transfer money between a campaign account and a non-campaign related account such as a constituent services account. A campaign treasurer is required to keep detailed accounts of all contributions received and expenditures made during the campaign. Montana’s campaign finance and disclosure laws reflect a sound policy of requiring full disclosure and reporting of the sources and disposition of funds used to support or oppose candidates, with accurate recordkeeping and documentation of all transactions.

Raser's undocumented transfer of funds between her campaign account and her constituent services account was inconsistent with this policy, and violates the letter and spirit of § 13-37-208, MCA, which requires a candidates' campaign to keep detailed accounts.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is substantial evidence to conclude that Holly Raser violated Montana campaign financial reporting and disclosure laws and rules, and that a civil penalty action § 13-37-128, MCA is warranted.

DATED this 26th day of May 2010.



Dennis Unsworth
Commissioner of Political Practices